

Although these answers have withheld the discovery asked for by the bill; yet they have, in one sense, most positively denied all its equity; that is, in the sense in which it might be said to have

159 *been denied by a demurrer, or a plea; but taken in another point of view, they have expressly admitted, or not denied the facts of the case out of which the plaintiff's equity arises. The facts of a plaintiff's case on which his injunction rests, may be materially different from those of his whole case on which he founds his claim to relief. *Hurst v. Thomas*, 2 *Anst.* 585, 591; *Doe v. Roe*, 1 *Hopk. Rep.* 276.

Hence an answer may have denied all the facts on which the injunction rests, and yet be entirely insufficient in all other respects. But, may an injunction be dissolved on the coming in of an answer which is, in this respect, insufficient? If it can, then it will be enough for the Court, on a motion to dissolve, to direct its attention chiefly or exclusively to so much of the bill and answer as speaks of the facts on which the injunction rests. But suppose the rule to be otherwise; and, that it requires the answer to be in all respects unexceptionable, then, upon a motion to dissolve, the Court ought not to confine itself altogether to the consideration of those facts which produce the equity on which the injunction rests, but must comprehend the whole case as laid before it by the bill and answer; so far as the answer is, or ought to be responsive to the bill. There is yet a third aspect in which this subject may be viewed. An answer may be in all respects unexceptionable; and admitting all the facts stated in the bill, it may positively deny all its equity, in the sense of a denial by a plea; by shewing matter in avoidance; which if taken for true will operate as a bar. Is the Court, on a motion to dissolve, to take the answer for true as to matter in avoidance; as well as in regard to allegations responsive to the bill? If it must, then the question will be; how stands the equity, taking the whole case represented by the defendant, as opposed to that shewn by the plaintiff?

These are important distinctions as regards a motion to dissolve; since it is perfectly clear, that, in almost every case, the result would vary according as the one or the other of these three modes of considering the subject should be adopted.

In England there appears to be several modes of obtaining and dissolving an injunction; and each of them seems to differ in some particulars from that pursued in this State.

After an injunction had been granted before answer, it is said, that, according to the English course of proceeding, the defendant may obtain an order to have the injunction dissolved on the

160 *coming in of the answer unless cause shewn. The sole object of which order *nisi* is to give the plaintiff time to see whether the answer is correct and sufficient or not. Under this order the plaintiff may shew for cause, that the answer is imperti-